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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRELL EUGENE PEARSON,

Defendant and Appellant.

C074914

(Super. Ct. No. CRF131356)

Darrell Eugene Pearson pleaded no contest to carrying a concealed dirk or dagger (Pen. Code, § 21310);¹ he also admitted he was previously convicted of a prior strike offense (§ 667, subds. (c), (e)(1)) and previously served a term in prison (§ 667.5, subd. (b)). In accordance with the terms of his plea agreement, the trial court sentenced defendant to an aggregate term of three years eight months in state prison. The trial court

¹ Undesignated section references are to the Penal Code.

also ordered defendant to pay various fines and fees, including a \$300 restitution fine (§ 1202.4, subd. (b)(1)) and a suspended \$300 parole revocation fine (§ 1202.45).

Defendant's only claim on appeal is that the \$300 restitution fine violates the ex post facto clause of the federal Constitution. In support of his claim, defendant argues the court intended to impose only the minimum restitution fine, which was \$280 at the time defendant committed the crime for which he was convicted.

The record is not entirely clear on this point.

At sentencing the following colloquy took place: "The Court: [¶] . . . [¶] Is the restitution fine still \$200 or --

"The Clerk: \$300, your Honor.

"The Court: Up to \$300. To be collected by Department of Corrections.

"There is also a \$300 restitution fine which is part of your parole, but if you are successful, that matter that [*sic*] would be stayed."

In any event, defendant failed to object to that discretionary sentencing choice in the trial court. The issue is thus forfeited on appeal. (See *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1469 [defendant forfeits the right to challenge on appeal imposition of a restitution fine by failing to object to the fine in the trial court]; see also *People v. Scott* (1994) 9 Cal.4th 331, 353.)

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

NICHOLSON, J.

ROBIE, J.